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FISCAL IMPACT STATEMENT

LS 6072

BILL NUMBER: HB 1377

NOTE PREPARED: Sep 16, 2010

BILL AMENDED:

SUBJECT: Murder Sentencing and Sentence Enhancements.

FIRST AUTHOR: Rep. Thompson

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X **GENERAL**
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- A. It makes committing a murder in the physical presence of a person who: (1) is less than 16 years of age; and (2) might be able to see or hear the murder; an aggravating circumstance that may be considered during the sentencing hearing for the murder.
- B. It allows a court to sentence a person to an additional fixed term of imprisonment that: (1) is not less than the advisory sentence for the underlying offense nor more than three times the advisory sentence for the underlying offense; and (2) does not exceed 30 years; if the person knowingly or intentionally committed certain offenses in the physical presence of a person less than 16 years of age who might be able to see or hear the offense.
- C. It allows a court to sentence a person to an additional fixed term of imprisonment of 10 years if the person knowingly or intentionally violated a protective order in the commission of certain offenses.

Effective Date: July 1, 2011.

Explanation of State Expenditures: *Aggravating Circumstance to Make Defendant Eligible for Death Penalty or Life Without Parole* – Adding this condition as an aggravating circumstance would permit the prosecuting attorney to request either the death penalty or life without parole if no other conditions exist in the case that would authorize the prosecuting attorney to do so.

Any added costs to the state will depend on whether the prosecuting attorney chooses to file for this added enhancement and the outcome of the case. Based on a study of 92 murder trials held in Indiana counties between 2000 and 2007 conducted by LSA, it was found that the most expensive cases occur when the

prosecuting attorney requests the death penalty, regardless of the outcome. The highest cost occurs if the prosecuting attorney requests the death penalty, a jury decides guilt, and the defendant appeals the case. The next most expensive outcome occurs when the prosecuting attorney requests the death penalty and the defendant agrees to plead guilty in exchange for life without parole. [The background information in the *Explanation of Local Expenditures* section of this note explains in more detail why death penalty cases are the most costly of the three sentencing options of death penalty, life without parole, and determinant sentencing.]

To compare the costs of this proposed option, LSA examined the “out-of-pocket” costs of 92 murder trials that occurred between 2000 and 2007. Out-of-pocket costs include attorney fees, expert witness payments, jury trials, staff overtime, and appeals costs. Out-of-pocket costs incurred by the prosecuting attorney’s office or the county sheriff are not included in this analysis.

State and county expenditures are combined in the table below because the Public Defense Fund reimburses counties for 50% of the costs of attorneys and certain investigations when a death penalty case is being tried and 40% of the costs when the prosecuting attorney requests either life without parole or a determinate sentence (IC 33- 40-6-4). The following table shows the combined costs.

Costs of 92 Murder Cases Between 2000 and 2007 Where a Person Was Sentenced to DOC by type of Punishment*						
Request	Trial or Plea	Outcome	Number of Cases	Costs of Attorneys, Expert Witnesses, Other Costs and Appeals	Discounted Cost of Incarceration	Combined Cost
Death	Trial	Death Sentence	6	\$449,887	\$55,886	\$505,773
Death	Trial	Life w/o Parole	1	\$518,002	\$110,445	\$628,447
Death	Plea	Life w/o Parole	19	\$122,441	\$109,072	\$231,513
Life w/o Parole	Trial	Life w/o Parole	7	\$42,658	\$108,889	\$151,547
Life w/o Parole	Plea	Life w/o Parole	7	\$21,985	\$108,721	\$130,706
Life w/o Parole	Trial	Term of Years	3	\$51,146	\$107,439	\$158,585
Life w/o Parole	Plea	Term of Years	2	\$37,382	\$111,416	\$148,798
Term of Years	Trial	Term of Years	36	\$23,837	\$110,087	\$133,924
Term of Years	Plea	Term of Years	11	\$3,986	\$108,720	\$112,706
*Note: Does not include added costs incurred by the offices of the Prosecuting Attorney or the Sheriff during the course of the trial.						

Added Fixed Term for Causing Death, Serious Bodily Injury, Kidnaping, or Criminal Confinement as a Class B Felony in the Presence of a Person Younger than 16 Years of Age – This sentencing option is similar to habitual offender sentencing.

Felonies that cause either serious bodily injury or death as the result of an intentional act can range from murder and Class A felonies to Class D felonies. LSA identified 16 offenses that range from murder to criminal recklessness that could cause death or serious bodily injury. The number of offenders who would

qualify for a sentence enhancement because the act was done in the presence of a person younger than 16 years of age is not known.

The following table shows the range of added years that an offender could be sentenced. The enhancement for both murder and Class A felonies would be a maximum of 30 years.

Minimum and Maximum Enhancements for Person Convicted of Committing a Violent Crime in the Presence of a Person Younger than 16 Years of Age		
<u>Felony</u>	<u>Not less than Advisory Sentence</u>	<u>Nor More than</u>
Murder	30	30
Class A	30	30
Class B	10	30
Class C	4	10
Class D	1.5	4

Additional Fixed Term of Imprisonment of 10 Years When Person is Convicted of Certain Violent Crimes and Knowingly and Intentionally Violated a Protective Order – The court would have the discretion of adding 10 years of incarceration to any person who knowingly and intentionally committed a felony causing death or serious bodily injury while violating a protective order. LSA identified 16 offenses that range from murder to criminal recklessness that could cause death or serious bodily injury. The number of offenders who might qualify for this sentence increase is not known.

Any added costs associated with these three provisions could increase the need for new prison beds. Generally, adult male facilities are operating at full capacity. Longer sentences would likely result in the Department of Correction (DOC) increasing the number of beds in facilities or sending more offenders to county jails. The average cost for DOC to house offenders in county jails is \$35 per day, or \$12,775 per year. The average expenditure to house an adult offender in a DOC facility was \$19,307 in FY 2010. (This does not include the cost of new construction.)

Explanation of State Revenues:

Explanation of Local Expenditures: *Aggravating Circumstance to Make Defendant Eligible for Death Penalty or Life Without Parole* – Under current law, the prosecuting attorney would not be able to request either the death penalty or life without parole unless one of 16 aggravating circumstances under IC 35-50-2-9 could be cited when a murder occurred. This bill would add a new aggravation circumstance.

Additional Fixed Term for Certain Violent Crimes Could Increase the Costs of Jury Trials – In cases being decided by a jury, if a prosecuting attorney requests added sentencing when the violent crime has been committed in the physical presence of a person under the age of 16 or when violating a protection order, jury costs would increase if the jury would have to deliberate for additional time. LSA estimates that each jury day costs \$1,315.

Background Information- Of the three possible sentencing options for murder, the death penalty is generally

the most expensive for trial courts to conduct because two attorneys are required to represent the accused, and a bifurcated trial is conducted to determine guilt or innocence and whether a sentence of death is warranted. Life without parole is the next most expensive option because, while two attorneys are not required for legal representation, a bifurcated trial is required to determine guilt or innocence and then whether a sentence of life without parole is warranted. Determinate sentencing of between 45 and 65 years is the least expensive option because one trial is conducted and two attorneys are not required to represent the defendant.

The following table summarizes the differences between these three options.

<u>Sentencing Option</u>	<u>Number of Defense Attorneys Needed</u>	<u>Type of Trial Conducted</u>
Death Penalty	Two	Bifurcated - one to determine guilt or innocence and one to determine whether death penalty is warranted; a sentencing hearing is separate.
Life Without Parole	One	Bifurcated - one to determine guilt or innocence and one to determine whether death penalty is warranted; a sentencing hearing is separate.
Determinate Sentence Between 45 and 65 Years	One	A single trial to determine guilt or innocence; a sentencing hearing is separate.

Consequently, the costs of legal representation for a case where the most serious sentence is between 45 and 65 years would likely be lower than the costs of a case involving life without parole.

The following table displays the cost components for 26 death penalty cases, 19 cases where life without parole is the most serious sentence, and 47 murder cases in which the most serious sentence is a term of years.

Cost Components for Murder Trials Based on 92 Murder Cases Between 2000 and 2007							
Original Request	Number of Cases	Jury Trials	Attorney Costs	Expert Witnesses	Other Costs	Costs of Appeals	Total Costs
Death Penalty	26	\$4,885	\$90,754	\$38,260	\$0	\$95,870	\$229,769
Life Without Parole	19	\$3,525	\$10,560	\$51,066	\$1,866	\$35,280	\$102,297
Term of Years	47	\$5,497	\$50,082	\$6,108	\$56	\$2,540	\$64,284

Explanation of Local Revenues:

State Agencies Affected: DOC; Public Defender Commission.

Local Agencies Affected: Trial courts; Prosecuting attorneys; County sheriffs.

Information Sources: DOC; Public Defender Commission; LSA survey.

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